

1 Ford Greene
California State Bar No. 107601
2 HUB LAW OFFICES
711 Sir Francis Drake Boulevard
3 San Anselmo, California 94960-1949
Telephone: (415) 258-0360

4 Attorney for Defendant
5 GERALD ARMSTRONG and THE
6 GERALD ARMSTRONG CORPORATION

130
ORIGINAL FILED

OCT - 4 1993

LOS ANGELES
SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA RECEIVED

9 FOR THE COUNTY OF LOS ANGELES

OCT 08 1993

HUB LAW OFFICES

11 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
12 not-for-profit religious)
corporation;)

13 Plaintiff,)

14 vs.)

15 GERALD ARMSTRONG; THE GERALD)
16 ARMSTRONG CORPORATION, a)
California corporation; DOES)
17 1-25, inclusive;)

18 Defendants.)

Case No. BC 084 642

DECLARATION OF FORD GREENE
IN SUPPORT OF REPLY RE
OF SPECIAL MOTION TO STRIKE
COMPLAINT

Date: October 6, 1993
Time: 8:30 a.m.
Dept: 30

Discovery Cut Off: None
Motion Cut Off: None
Trial Date: None

20 FORD GREENE declares:

21 1. I am an attorney licensed to practice law in the Courts
22 of the State of California and am the attorney of record for
23 Gerald Armstrong and The Gerald Armstrong Corporation, defendants
24 herein.

25 2. I am also the attorney of record for said defendants in
26 Church of Scientology International v. Armstrong, L.A.S.C. No. BC
27 052 395 ("Armstrong II") and in the appeal of a preliminary
28 injunction in that case for which notice was filed on July 30,

1 1992, in Second District Court of Appeal, case No. B 069 450.

2 3. Attached hereto and incorporated herein are true and
3 correct copies of documents the authenticity of which I know
4 because I am the attorney of record in the litigation in which
5 they were filed, except as to Exhibit C, which on information and
6 belief I allege to be genuine. Said documents are designated as
7 follows:

- 8 A. Letter From Ford Greene to Andrew H. Wilson dated
9 September 7, 1993;
- 10 B. Excerpts from Deposition of Gerald Armstrong June 24,
11 1993 in Armstrong II;
- 12 C. Respondent's Petition For Permission To File Response
13 And For An Extension Of Time To File Response filed
14 February 28, 1990 in Church of Scientology of California
15 v. Gerald Armstrong, Second District Court of Appeal,
16 Div. 3, Case No. B025920;
- 17 D. Scientology's motion for preliminary injunction in
18 Armstrong II;
- 19 E. Excerpts from Deposition of Gerald Armstrong July 22,
20 1993 in Armstrong II;
- 21 F. Excerpts from Transcript of Proceedings on Motion for
22 Preliminary Injunction held May 27, 1992;
- 23 G. Transcript of Proceedings on Order to Show Cause re
24 Contempt held March 5, 1993.

25 ///

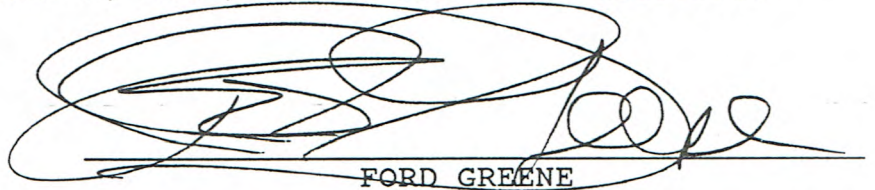
26 ///

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28 ///

1 Under penalty of perjury pursuant to the laws of the State of
2 California I hereby declare that the foregoing is true and correct
3 according to my first-hand knowledge, except those matters stated
4 to be on information and belief, and as to those matters, I
5 believe them to be true.

6 Executed on October 3, 1993, at San Anselmo, California

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9 FORD GREENE

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FORD GREENE
LAWYER

HUB LAW OFFICES
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960-1949
(415) 258-0360

LICENSE No. 107601
FACSIMILE (415) 456-5318

September 7, 1993

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

By Telecopier
415-954-0938

RE: *Church of Scientology International v. Armstrong*
Los Angeles Superior Court
Case No. BC 084 642

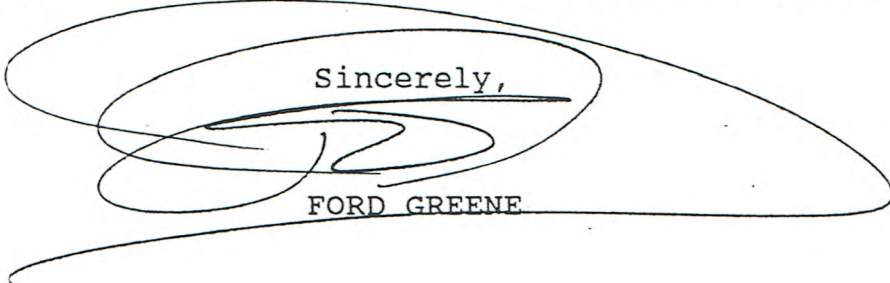
Dear Mr. Wilson:

This letter will confirm that Mr. Armstrong shall ^{have} until September 14, 1993, to respond to CSI's first request for production in the above-referenced case.

I would like to reiterate Mr. Armstrong's desire to enter into a stipulation consolidating the above referenced case with Armstrong II. Given the fact ^{that} the issues and conduct in both cases are identical from both the plaintiff and defense points of view, when taken in conjunction with the intensity of the litigation and the extent to which Armstrong II has progressed to date, I don't think there is any question that a motion brought pursuant to C.C.P. § 1048, CRC 367, and Local Rules 227-229 would be granted.

Please let me know by the end of the week whether we can enter into such a stipulation so that I can plan accordingly.

Sincerely,



FORD GREENE

:acg
cc: Laurie J. Bartilson
Paul Morantz
Gerald Armstrong

FORD GREENE
LAWYER

HUB LAW OFFICES
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SAN ANSELMO, CALIFORNIA 94960-1949
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235 Montgomery Street, Suite 450
San Francisco, California 94104

By Telecopier
415-954-0938

RE: *Church of Scientology International v. Armstrong*
Los Angeles Superior Court
Case No. BC 084 642

Dear Mr. Wilson:

The purpose of this letter is to ask you to allow Mr. Armstrong an extension of time to respond to plaintiff's first request for production of documents in the above case until he has an opportunity to litigate whether or not it should be dismissed as being duplicative of the litigation already under way in what is known as Armstrong II (L.A.S.C. No. BC 052395). Otherwise, Armstrong intends to file a motion for a protective order.

Our position with respect to Armstrong III is that it is duplicative of litigation that is currently the subject of Armstrong II and should have been filed as a supplemental complaint to that litigation. To have filed it as a separate lawsuit violates the rule against splitting a cause of action because the issues in both lawsuits are the same. That is, are the provisions in the December 1986 settlement contract that Scientology alleges Armstrong to have breached enforceable?

As you know the issue whether or not certain provisions of the settlement contract are illegal, and thus unenforceable, is currently before the Second District Court of Appeal in Civ. No. B 069450. In light of the court of appeal addressing that issue two different judges in Armstrong II have deferred acting until the court of appeal rules on the illegality of contract issue.

Thus, on March 5, 1992, Judge Wayne refused to rule on Scientology's Order to Show Cause re Contempt. Likewise on March 23, 1992, Judge Horowitz, to whom the case has been assigned for trial, stayed all proceedings pending the appellate court's ruling.

Andrew H. Wilson
September 7, 1993
Page 2.

By Telecopier

In order to avoid Judge Horowitz' stay order, Armstrong III has been filed and served. Moreover, certain allegations in Armstrong III also formed the basis of the contempt proceeding that Judge Wayne has refused to hear pending the appellate court's resolution of the settlement agreement.

In Wulfen v. Dolton (1944) 24 Cal.2d 891, 894, 151 P.2d 840, the Supreme Court held:

It is clearly established that a party may not split up a single cause of action and make it the basis of separate suits, and in such case the first action may be pleaded in abatement of any subsequent suit on the same claim. [Citations.] The rule against splitting a cause of action is based upon two reasons: (1) That defendant should be protected against vexatious litigation; and (2) that it is against public policy to permit litigants to consume the time of the courts by relitigating matters already judicially determined, or by asserting claims which properly should have been settled in some prior action. [Citation.] "It is not the policy of the law to allow a new and different suit between the same parties, concerning the same subject matter, that has already been litigated. Neither will the law allow the parties to trifle with the court by piecemeal litigation."

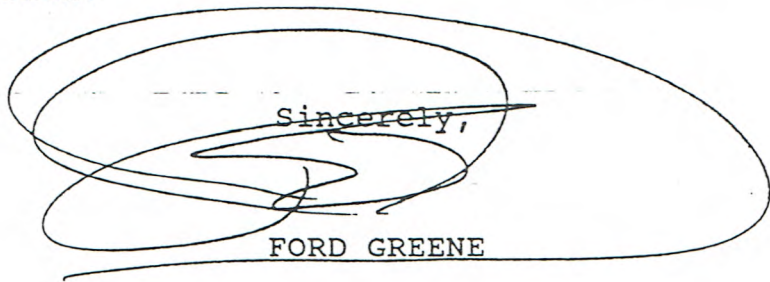
Accord: Steigerwald v. Godwin (1956) 144 Cal.App.2d 591, 301 P.2d 386, 389-390.

Code of Civil Procedure section 1047 allowing for successive actions upon the same contract does not control when the second action involves the same cause of action as the first, that is, whether or not the settlement contract is enforceable. The reason for this is that a "final adjudication of such issue in the first case will be a bar to the same issue in the second, and that is the test for determining whether or not the identity of the matter involved in both actions is the same." (Dodge v. Superior Court (1934) 139 Cal.App. 178, 33 P.2d 695, 696.)

Andrew H. Wilson
September 7, 1993
Page 3.

By Telecopier

As today is the date when Armstrong must respond to plaintiff's first request for production, please get back to me right away regarding the above. If you believe that my position may have merit and want further time to analyze the same, I suggest you provide Mr. Armstrong a brief extension to allow our further discussion.



Sincerely,

FORD GREENE

:acg

cc: Laurie J. Bartilson
Paul Morantz
Gerald Armstrong

IN AND FOR THE SUPERIOR COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation,

Plaintiff,

vs.

Case No. BC 052395

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

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JUL 10 1992

HUB LAW OFFICES

DEPOSITION OF
GERALD ARMSTRONG

Wednesday, June 24, 1992

REPORTED BY: SUSAN M. SKIGEN, CSR #5829

1 page nine.

2 MR. WILSON: Q. Mr. Armstrong, is the
3 provision that appears in subparagraph C on page nine and
4 continuing into page 10, is that the provision that
5 you've been testifying about that you believe requires
6 you to --

7 A. Right.

8 Q. Let me finish my question so the record is
9 clear.

10 -- is that the provision that you believe
11 required you to participate in obstruction of justice?

12 A. Among the other ones, yes.

13 Q. I'd like to go back to your conversations
14 with Mr. Flynn. At the time the settlement agreement
15 was signed, is it accurate that you got the settlement
16 agreement, had discussions with Mr. Flynn, then it was
17 signed the next day?

18 A. I believe it was the next day.

19 Q. And how many meetings did you have with Mr.
20 Flynn between the time that you got the settlement
21 agreement from him and the time it was signed?

22 A. I got the agreement, I had another meeting,
23 I had another meeting, and then it was signed.

24 Q. So counting the times that you got the
25 agreement and the time that you signed it, there were

1 four?

2 A. My recollection is yes.

3 Q. Do you have a specific recollection about,
4 I think you've testified about what happened when he
5 gave it to you.

6 Do you have a specific recollection about
7 what was discussed on the second meeting, the occasion
8 when you actually discussed your problems with the
9 agreement?

10 A. I have a recollection of some of it.

11 Q. And let me see, you've already testified
12 that he told you he believed the agreement was
13 unenforceable, is that right, at that meeting?

14 A. Right, and that he said it's not worth the
15 paper that it's printed on.

16 Q. And you also at that time discussed with
17 him your concern that it would prevent you from talking
18 about anything that happened in the last 17 years of
19 your life; right?

20 A. Right.

21 Q. Okay.

22 A. And he said, as I say in answer to that
23 that, it's unenforceable.

24 Q. You don't have to, if you have previously
25 testified to something, you don't have to repeat it

1 again. I just want to make sure I have your testimony
2 as to everything that happened at that meeting.

3 A. If I can recall it, I will.

4 Q. Then it's my recollection that you also at
5 that time discussed your problem with the so-called
6 obstruction of justice; is that right?

7 A. Right.

8 Q. And at that time you also discussed your
9 problem with not being able to help people; is that
10 right?

11 A. I don't believe specifically, like, Mike, I
12 won't be able to help people, but rather this calls for,
13 this is an obstruction of justice.

14 Q. But the whole agreement?

15 A. Right. And not being amenable to service
16 of process.

17 Q. That was discussed at that meeting as well?

18 A. Right.

19 Q. And that was the meeting where he told you
20 that it was unenforceable and that the organization's
21 lawyers knew that it was unenforceable; right?

22 A. Right.

23 Q. And is that the meeting where he told you
24 that he needed to get on with his life and you needed to
25 get on with your life?

1 A. He --

2 MR. GREENE: This is still, excuse me, the
3 second meeting?

4 MR. WILSON: Yes.

5 THE WITNESS: Right. That was the major
6 meeting, there was one major time of discussion and that
7 was it.

8 MR. WILSON: Q. That was the second
9 meeting, the one right after the one where he gave you
10 the agreement?

11 A. Right.

12 MR. GREENE: Just so the, the next day, I
13 mean, in sequence it was the --

14 THE WITNESS: I think it wasn't the next
15 day because the next day we, in the meantime, the
16 document got, they added the bit about me being able to
17 keep my art.

18 MR. WILSON: Q. By the meeting right
19 after, what I meant was it was the meeting after the one
20 where you got the agreement. There was no intervening
21 meeting?

22 A. Right.

23 Q. And that was the meeting where most of the
24 discussions happened; is that right?

25 A. Right.

1 Q. And was there any discussion at that
2 meeting about the desire of the other plaintiffs in the
3 group to settle?

4 A. Oh, yeah.

5 Q. Were they there as well at that meeting?

6 A. No, Eddie Walters was there, but he was the
7 only one. The others were not there. But this was one
8 of Mike's arguments for me to sign the agreement,
9 everyone else was depending on my signing.

10 Q. That's the one where he told you that his
11 wife's health had been hurt and that his life was being
12 ruined and he wanted to get on with his life?

13 A. Yes. He said essentially it ruined his
14 marriage, and I believe he brought up the incident at
15 that time of the plane incident. But certainly
16 operations in fair game were discussed, that is, about
17 him and what they had done in his life and the threat to
18 him.

19 Q. You said the plane incident, what is the
20 plane incident?

21 A. He had maintained that the organization had
22 attempted to assassinate him by fiddling with his plane.
23 He had a single engine plane prior to my coming to work
24 for him. And he had claimed that the organization, that
25 they'd attempted to kill him.

1 Q. Okay.

2 A. And I knew of many of the attacks on him.
3 And I knew of the attempt to frame him with the forgery
4 of the two million dollar check.

5 Q. Now, this meeting was the one where Mr.
6 Walters was in the room?

7 A. Right.

8 Q. What did Mr. Walters say during that
9 meeting, if anything?

10 A. I was objecting. And his participation was
11 essentially to scream me down, that I was killing the
12 settlement, everyone was depending on the settlement,
13 and when he, he reiterated Mike's line, you know, "Hey,
14 it isn't worth the paper it's printed on."

15 "I can't live by this."

16 "It isn't worth the paper it's printed on."

17 And I looked to Mike for some kind of
18 support in this because I considered my position was
19 very logical and very, very sane and I felt like I
20 needed some protection, and I didn't get any from him.
21 And so I just felt like, I'm just fucking cut adrift,
22 I'm out there alone, you know, my lawyer and the other
23 guys have concocted this thing. I was devastated.

24 Q. And I take it you felt you really had no
25 choice but to sign the agreement?

1 A. It came, it came down to that. I couldn't
2 see any way out. You know, I was, I knew that I was
3 going to have lawyers who were afraid for their lives,
4 who were going to be, at a minimum, pissed off at me. I
5 was going to have witnesses, many of whom were
6 signatories to similar documents who were not going to
7 come to my assistance and who were going to be turned
8 against me.

9 I had been positioned as the deal breaker.
10 I had been cleverly manipulated into, the whole time,
11 into which I was -- and who was going to sign first, and
12 who was going to come after that.

13 The language of the agreement was cleverly
14 concocted. And I felt totally trapped and totally
15 abused. But I also figured that all of these people
16 want out, if that's what they want, I will do what I
17 can, I will bite my tongue, I will try to abide by it, I
18 will try to have peace reign because that's what I
19 really want. But I also felt like in so doing I was as
20 an individual violated.

21 Q. Tell me something, you said you were
22 cleverly manipulated as to the time you signed it.
23 Please explain what exactly had happened to cleverly
24 manipulate you and who manipulated you?

25 A. I've been in the law business long enough

1 to know that a person is not flown 3,000 miles without
2 having seen a document in advance of that fact. That to
3 me is not good lawyering.

4 I also was aware that before I had seen
5 this document, that people had been flown from all over
6 the country to sign documents like it.

7 I had been brought into the room wherein
8 was Eddie Walters whose purpose in being there was to
9 support Michael Flynn or be the vehicle for an attack on
10 me.

11 Q. Was supporting Michael Flynn being a
12 vehicle for attack?

13 A. He was being the vehicle for attack on me,
14 I mean.

15 Q. Excuse me, Mr. Armstrong --

16 A. Who was the most, I was the most
17 knowledgeable person there, I had the most legal
18 knowledge, I understood the document. I was not being
19 blind.

20 And it was recognized that I was probably
21 the most, one might say stubborn, but certainly the most
22 likely to protest. I mean, I just happened to have that
23 kind of a personality or that kind of a dedication to
24 things that I get involved in.

25 Q. Let me see if I can clear something up.

1 You said that Mr. Walters was there to support Michael
2 Flynn, or attack you. Was that the same thing in your
3 mind? Was supporting Mr. Flynn, did that have to
4 involve an attack on you?

5 A. No, it doesn't have to involve, no, you're
6 misinterpreting it.

7 In this particular instance, you know,
8 you've got to understand I, I mean, I've been involved
9 with Michael Flynn since 1982, we went down a long track
10 together. I loved the guy.

11 This thing and that fucking meeting, that
12 was just like, fuck, they did it with Dan Sherman and
13 then they did it with Michael Flynn, and he hung me out
14 there.

15 It was just, you know, and I still love the
16 guy, but it's just, it was crooked, it wasn't right what
17 he did. He could have stood up one more day and said no
18 way, you guys rewrite this whole thing. No, you guys
19 really want this litigation to end, you really want
20 peace, make some kind of, send us an olive branch, don't
21 send us more fair game. But, no, Michael Flynn
22 succumbed.

23 Q. And you believe that Mr. Flynn knew before
24 you got there that you were going to be difficult; is
25 that right?

1 A. Yes.

2 Q. And that's why Mr. Walters was there?

3 A. That's my take on it. I mean, if, you
4 know, I've been working with Mike Flynn, I'm his
5 employee, I'm his client and he's letting this other guy
6 yell at me because I'm trying to protect my rights,
7 that's crazy.

8 Q. Now, you were talking about the timing of
9 how you were flown there. As far as you know, were
10 other people flown there first to sign before?

11 A. Other people were there before me.

12 Q. Do you know whether they signed before you?

13 A. I believe I'd even seen signatures before
14 mine.

15 Q. At the time you were there, did you know
16 other people had already signed?

17 A. I believe so.

18 Q. So you're sitting there in the room, you
19 know other people had already signed, Flynn is telling
20 you the agreement is not enforceable and Walters is
21 yelling at you that the agreement has to be signed; is
22 that correct?

23 A. That's part of the picture. Add into that
24 years of fair game, add into that the threat and --

25 Q. And you basically felt that Mr. Flynn had

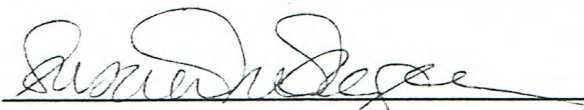
CERTIFICATE OF REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my signature this _____ day of _____, 19____

JUL 09 1992



CERTIFIED SHORTHAND REPORTER

STATE OF CALIFORNIA

FEB 28 1990

EA

COURT OF APPEAL - SECOND DIST.

FILED

FEB 28 1990

ROBERT N. WILSON Clerk

ORIGINAL

MAR - 9 1990

Permission to file
respondent's brief
GRANTED

Time to file respondent's
brief extended to 60 days
after date of this order.

Deputy Clerk

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Plaintiffs-Appellants,

v.

GERALD ARMSTRONG,

Defendant-Respondent

MARY SUE HUBBARD

Intervenor.

) Case No. B025920

) LASC No. C420153

) RESPONDENT'S PETITION
) FOR PERMISSION TO FILE
) RESPONSE AND FOR AN
) EXTENSION OF TIME TO
) FILE RESPONSE

3-22-90

I am the respondent Gerald Armstrong. I am petitioning this court at this time for permission to file a respondent's brief in this appeal and for an extension of time in which to file a respondent's brief or other appropriate document.

1. Permission to File:

The unusual need for this court's permission to file a respondent's brief arises from a condition contained in a document entitled MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT signed by me December 6, 1986, a copy of which is attached hereto in a sealed envelope as Exhibit A. I have no objection to this document being unsealed.

Para. 4A of the settlement agreement allowed appellants to maintain their appeal, no. B005912, which had been filed in 1984, although the case

was ostensibly settled. Para. 4B contains the condition that I "waive any rights [I] may have to oppose (by responding brief or any other means) any further appeals taken by the Church of Scientology of California."

I have recently become convinced that it would be a fraud upon this court to not advise it that the respondent is prohibited from filing a brief. I am also now convinced that my right to file a respondent's brief is not something that can be taken away by such a settlement agreement.

I have discovered, moreover, that "the failure to file respondent's brief imposes an unnecessary burden on [the] court, and at least raises the inference that respondent concedes that the appeal is meritorious," Sowell v. Sowell, 164 Cal. App. 2d 371, 330 P.2d 391 (1958), Yarbrough v. Yarbrough, 144 Cal. App. 2d 610, 301 P. 2d 426 (1956); that the court "may assume . . . that the respondent has abandoned any attempt to support the judgment, and . . . may also assume that the points made by the appellant are meritorious," Roth v. Keene, 256 Cal. App. 2d 725, 64 Cal. Rptr. 399 (1967); and that the court "shall regard with disfavor the failure of a respondent in any case to assist the court by means of an answering brief," James v. James, 125 Cal. App. 2d, 417, 270 P.2d, 538 (1954).

I am therefore requesting this court's permission to file a respondent's brief, motion for dismissal or other responsive document.

2. Extension of Time to File:

I received Appellants' Brief and Appellants' Supplemental Appendix in Lieu of Clerk's Transcript from Flynn, Sheridan & Tabb on January 18, 1990. I have not yet received Appellants' Appendix.

I am not an attorney and I am not represented by legal counsel in any Scientology matters at this time. Neither Flynn, Sheridan & Tabb nor Contos & Bunch, both of which firms represented me throughout the litigation of

this case in the lower court, will be representing me in this appeal. It is my intention to retain an attorney to represent me in this appeal if at all possible.

Appellants had five and a half years from the date the trial court issued its Decision to the date they filed their brief.

Appellants have filed another appeal, entitled Church of Scientology of California and Mary Sue Hubbard, Appellants, against Gerald Armstrong, Defendant, Bent Corydon, Appellee, Civ. No. B 038975 in Division Four in the Second Appellate District, which has its genesis in the same case underlying this appeal, Super. Ct. No. C420153, and concerns many of the same facts and issues as this appeal. I am at this time also petitioning the Division Four Court for permission to respond in that appeal.

There remain a number of issues springing from the settlement agreement, appellants' actions in violation of the agreement, and appellants' obstructive and threatening use of the agreement, which this court does not have to consider in order to grant my petition, but which I will be addressing as soon as possible by motion or other appropriate action in the Los Angeles Superior Court, which retains, pursuant to clause 20 of the settlement agreement, jurisdiction to enforce its terms.

I therefore request 90 days from the date of this court's granting of this petition in which to file a respondent's brief or other responsive document.

DATED: February 20, 1990

Respectfully submitted



GERALD ARMSTRONG

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business adress is 7140 Buckingham Blvd., Berkeley, CA 90475.

On February 20, 1990 I caused to be served the foregoing document described as RESPONDENT'S PETITION TO FILE RESPONSE AND FOR AN EXTENSION OF TIME TO FILE RESPONSE on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully-prepaid in the United States mail at Oakland, California, addressed to the persons and addresses specified on the service list attached.

Executed on February 20, 1990 at Oakland, California.

1 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
2 235 Montgomery Street
Suite 450
3 San Francisco, California 94104
(415) 391-3900

RECEIVED

MAY 11 1992

HUB LAW OFFICES

4 Laurie J. Bartilson
5 BOWLES & MOXON
6255 Sunset Boulevard
6 Suite 2000
Hollywood, California 90028
7 (213) 661-4030

8 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 CHURCH OF SCIENTOLOGY OF) Case No. BC 052395
12 INTERNATIONAL, a California)
not-for-profit religious) AMENDED MEMORANDUM OF POINTS
13 corporation;) AND AUTHORITIES IN SUPPORT OF
14) PLAINTIFF'S MOTION FOR PRELIMINARY
15) INJUNCTION FOR BREACH OF
16) CONTRACT
17)
18)
19 Plaintiff,)
20 vs.)
21) DATE: May 14, 1992
22) TIME: 8:30 a.m.
23) DEPT: 86
24)
25)
26)
27)
28)
GERALD ARMSTRONG and DOES 1)
through 25, inclusive,)
Defendants.)
DISCOVERY CUTOFF: None
MOTION CUTOFF: None
TRIAL DATE: None

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1 I. PRELIMINARY STATEMENT

2 In December, 1986, plaintiff Church of Scientology International ("the
3 Church" or "plaintiff") sought to end a period of long and bitter
4 harassment and attack from former-member Gerald Armstrong ("Armstrong" or
5 "defendant"). Armstrong, who had been expelled from the Scientology
6 religion after stealing confidential documents belonging to the religion's
7 Founder, L. Ron Hubbard, entered into a campaign of activities, both overt
8 and covert, intended to divide Church members from the ecclesiastical
9 leaders of the Church, forge incriminating documents and plant them in
10 Church files, stage a raid on Church facilities by government officials on
11 the basis of the forged documents planted in Church files, get Church
12 members to disaffect and file lawsuits against the Church on the basis of
13 naked allegations insupportable by any evidence and, in Armstrong's own
14 words, "to create as much s--- as possible" for the Church. [See Ex. 3,
15 Declaration of Lynn F. Farny ("Farny Decl."), ¶ 7.]

16 Armstrong's bitter and lengthy campaign was ended, or so plaintiff
17 thought, when he entered into a confidential Settlement Agreement (the
18 "Agreement") with plaintiff in 1986. The terms of the Agreement required
19 Armstrong not merely to end his own litigation against plaintiff, but among
20 other things, also required Armstrong to refrain from aiding others in
21 litigation, to return to the Church the documents which he had stolen and
22 all copies of them, to refrain from discussing with third parties his
23 experiences with the Scientology faith, and to keep confidential all terms
24 of the Agreement itself. This amicable settlement was achieved only after
25 careful and extensive negotiations. [Ex. 4, Declaration of Lawrence E.
26 Heller ("Heller Decl."), ¶ 2.]

27 Unfortunately, an amicable separation was not to be. Despite a
28 carefully drawn mutually acceptable Agreement, Armstrong is at it again.

1 Since June, 1991, Armstrong has, by his own admissions:

2 - Provided aid to anti-Church litigants Vicki and Richard Aznaran¹
3 and Joseph Yanny² through declarations purporting to describe Armstrong's
4 Scientology experiences, along with copies of documents that Armstrong
5 agreed to keep confidential, including the Agreement;

6 - Performed paralegal services for Yanny in the Aznarans' case; and

7 - Performed paralegal services in the Aznarans' case for the
8 Aznarans' present attorney, Ford Greene, which continues to the present.

9 Rather than deny these activities, all of which violate the Agreement,
10 Armstrong boasts of them.³ To put an end to Armstrong's unlawful campaign
11 once and for all, the Church requests the entry of this preliminary
12 injunction to enjoin Armstrong from committing further and continuous
13 breaches of his Agreement while the effects of his earlier breaches are
14 adjudicated.⁴

15
16 ¹ Vicki Aznaran is the former president of another entity affiliated
17 with the Scientology faith, Religious Technology Center. She and her
18 husband Richard, a former employee of the plaintiff Church, are involved in
19 litigation against plaintiff and other Church parties, Vicki Aznaran, et
al. v. Church of Scientology of California, et al., United States District
Court for the Central District of California, No. CV 88-1786 JMI (Ex).

20 ² Joseph Yanny is the former attorney for the Church and is also a
21 defendant in a pending action, Religious Technology Center, Church of
Scientology International and Church of Scientology of California v. Joseph
A. Yanny ("Yanny 2"), LASC No. BC-033035, in which he has been enjoined
22 from legal representation of Armstrong against his former clients.

23 ³ The Church's pleas and requests that he honor his Agreement have proven
24 fruitless; rather, Armstrong, having spent the proceeds of his earlier hate
25 campaign, seems bent on extorting still more money from this plaintiff with
26 his outrageous conduct. On a daily and continuous basis, Armstrong is
working to poison proceedings involving current anti-Church litigants,
impeding any hope of resolving those cases short of a lengthy and expensive
trial.

27 ⁴ See, e.g., Exhibits 1F, 1J and 1K to Request for Judicial Notice
28 ("Request") and Exhibit 2B to Declaration of Andrew H. Wilson ("Wilson
Decl.")

II. STATEMENT OF FACTS

A. The Settlement Agreement

In December, 1986, the Church entered into the Agreement with Armstrong. The Agreement provided for a mutual release and waiver of all claims arising out of a cross-complaint which defendant Armstrong had filed in Church of Scientology of California v. Gerald Armstrong, Los Angeles Superior Court No. C 420153.⁵ The Agreement included multiple clauses designed to guarantee that new actions were not spawned or encouraged by the conclusion of the old one.⁶ These clauses included provisions that Armstrong would not: (1) assist or advise anyone else engaged in litigation adverse to the interests of the Church; (2) testify or otherwise participate in any other judicial proceeding adverse to the Church unless compelled to do so by lawful subpoena; (3) disclose documents at issue in the case; or (4) disclose to anyone the terms of the Agreement itself.⁷ The Church had good reason for negotiating these particular clauses with Armstrong. In addition to his own litigation, Armstrong fomented significant additional litigation against the Church and other Churches of Scientology, stirring up enmities of other former members. Moreover, Armstrong became involved in plot after clandestine plot to take over or

⁵ The signatories to the Agreement were Gerald Armstrong and the Church of Scientology International, by its President, Heber Jentzsch. [Ex. 2A to Wilson Decl.] Mr. Armstrong's signature was witnessed by Jo Ann Richardson and Michael Sutter, and the Agreement was signed with approval as to form and content by Mr. Armstrong's attorney, Michael Flynn. [Id.]

⁶ See specifically ¶¶ 7(H), 7(G), 10, 7(D), 18(D), 20 of Exhibit 2A, the Agreement.

⁷ Armstrong also agreed that damages for violations of the nondisclosure provisions would be a liquidated amount of \$50,000 per disclosure.

1 even destroy his former religion.⁸

2 Armstrong received a portion of a total settlement paid to his
3 attorney, Michael Flynn, in a block settlement concerning all of Mr.
4 Flynn's clients who were in litigation with any Church of Scientology or
5 related entity. The exact portion of the settlement which Armstrong
6 received was maintained as confidential between Mr. Flynn and Armstrong.

7 ///

8 ///

9
10 ⁸ In November, 1984, for example, Armstrong was plotting against the
11 Scientology Churches and seeking out staff members in the Church who would
12 be willing to assist him in overthrowing Church leadership. The Church
13 obtained information about Armstrong's plans and, through a police-
14 sanctioned investigation, provided Armstrong with the "defectors" he
15 sought. On four separate occasions in November, 1984, Armstrong met with
16 two individuals that he considered to be defectors, whom he knew as "Joey"
17 and "Mike." In reality, both "Joey" and "Mike" were loyal Church members
18 who, with permission from the Los Angeles police, agreed to have their
19 conversations with Armstrong surreptitiously videotaped. During the course
20 of these conversations, Armstrong:

21 a. Demanded that "Joey" provide him with copies of documents
22 published by the Church so that he could forge documents in the
23 same style. Armstrong wanted "Joey" to then plant these
24 Armstrong creations in the Church's files so that Armstrong could
25 tip off the Criminal Investigations Division of the Internal
26 Revenue Service ("CID"), and the incriminating documents would be
27 found in a resulting raid;

28 b. Sought to "set up" the defection of a senior Scientologist by
finding a woman to seduce him;

29 c. Told "Joey" all about his conversations with Al Lipkin, an
30 investigator for the CID, and attempted to get "Joey" to call
31 Lipkin and give him false information that would implicate the
32 Church's leaders in the misuse of donations; and

33 d. Instructed "Mike" on the methods of creating a lawsuit
34 against the Church leadership based on nothing at all:

35 ARMSTRONG: They can allege it. They can allege it.
36 They don't even have -- they can allege it.

37 RINDER: So they don't even have to have the document
38 sitting in front of them and then --

39 ARMSTRONG: F___ing say the organization destroys the
40 documents.

41 * * *

42 Where are the -- we don't have to prove a goddamn
43 thing. We don't have to prove s___t; we just have to
44 allege it.

45 [Ex. 3, Farny Decl., ¶¶ 4 and 5.]

46

1 **B. Armstrong Has Violated the Settlement Agreement**

2 **1. Armstrong Violated The Agreement By Providing Aid To Anti-**
3 **Church Litigants Vicki And Richard Aznaran**

4 Vicki and Richard Aznaran ("the Aznarans"), are former Church members
5 currently engaged in litigation against, inter alia, RTC and CSI. In June,
6 1991, the Aznarans discharged their attorney, Ford Greene, and retained
7 Joseph A. Yanny to represent them. [Exs. 1A, 1B, 1C, 1D to Request,
8 Substitutions of Attorney.]⁹

9 While counsel for the Aznarans, Yanny hired Armstrong, in Yanny's own
10 words "as a paralegal to help [Yanny] on the Aznaran case." [Ex. 1E to
11 Request, Transcript of Proceedings in Religious Technology Center et al. v.
12 Joseph A. Yanny, et al., LASC No. BC 033035 ("RTC v. Yanny"), p. 25.] In
13 a holographic declaration supplied to Yanny, Armstrong admitted that Yanny
14 called him on July 10, 1991, and asked for Armstrong's help in Yanny's
15 representation of the Aznarans [Ex. 1F to Request, Declaration of Gerald
16 Armstrong of July 19, 1991, ¶ 2]; that Armstrong agreed to help Yanny with
17 the Aznarans' case; that he would travel to Los Angeles for that express
18 purpose on July 12, 1991 [Id., ¶ 3]; and that Armstrong asked Yanny to pay
19 him \$500 for his services. [Id., ¶ 3.] Armstrong admits that he did
20 travel to Los Angeles, did stay with Yanny on July 15 and 16, and wrote a
21 declaration for Yanny and the Aznarans. [Id., ¶ 4.] Yanny has also
22 admitted that he hired Armstrong as a paralegal against the Church and
23 other related entities. [Ex. 1G to Request, Declaration of Joseph A.
24 Yanny, July 31, 1991, ¶ 4, and Ex. 1E to Request, supra.]

25 Armstrong's acceptance of employment from Yanny to work on the

26 ⁹ Yanny is former counsel to the Church parties and his substitution into
27 the case was later vacated by the Court sua sponte, the Court noting that
28 Yanny's retention as the Aznarans' counsel was "highly prejudicial" to CSI.

1 Aznarans' case patently violates Paragraphs 10 and 7(G) of the Agreement,
2 which prohibits Armstrong from providing aid or advice to anyone engaged in
3 or contemplating litigation adverse to the Church. [Ex. 2A, ¶¶ 7(G), 10.]
4 The Aznarans are directly engaged in litigation with RTC and CSI, and
5 Armstrong has provided direct assistance to them by acting as Yanny's
6 paralegal. There could not be a clearer example of conduct which violates
7 the letter and intent of the Agreement.

8 **2. Armstrong Also Violated the Agreement by**
9 **Aiding Yanny in Litigation Against the Church**

10 After Yanny entered his appearance for the Aznarans and indicated to
11 Church counsel that he represented Armstrong as well, the Church and two
12 related entities sued Yanny in this Court. In that action, the Church
13 sought and obtained a Temporary Restraining Order and a Preliminary
14 Injunction against Yanny [Ex. 1H, Ex. 1I], enjoining Yanny from aiding,
15 advising, or representing, directly or indirectly, the Aznarans or
16 Armstrong, on any matters relating to the Church. In those proceedings,
17 Yanny filed two declarations prepared and executed by Armstrong [Exs. 1J
18 and 1K to Request] in which Armstrong asserts knowledge of settlements,
19 including his own, which he purportedly gleaned by working as a paralegal
20 for yet another law firm. [Ex. 1J to Request, ¶¶ 2-5]. The declarations
21 were offered by Yanny as part of Yanny's defense, which was ultimately
22 rejected by the Court when it issued its injunction. [Ex. 1E to Request,
23 at 31-34.] Just as in the Aznarans' case, this aid provided by Armstrong
24 to Yanny, a litigant against the Church, was a direct violation of
25 paragraphs 10 and 7(G) of the Agreement. Moreover, Armstrong attached as
26 an exhibit to one of the declarations, Ex. K, a copy of the Agreement, the
27 terms of which he had agreed to keep confidential. [Ex. 2A to Wilson
28 Decl., ¶ 18(d).] This disclosure of the terms of the Agreement is a direct

1 violation of the Agreement.

2 **3. Armstrong Violated the Agreement by**
3 **Helping Ford Greene with the Aznaran Case**

4 Armstrong is brazenly, openly and continually assisting adverse
5 litigants and bragging about it to the Church's counsel and staff. After
6 Yanny's substitution into the Aznarans' case was summarily vacated, Ford
7 Greene was reinstated as the Aznarans' counsel of record. In a letter to
8 the Church's counsel dated August 21, 1991, Armstrong admitted that he had
9 been working at Greene's office with Greene on the Aznarans' case, helping
10 him to prepare responses to summary judgment motions filed in that case.
11 [Ex. 2B to Wilson Decl., p. 2.] Both Armstrong and Greene have freely
12 admitted in sworn declarations that Greene has and is continuing to employ
13 Armstrong as a paralegal in the Aznaran case. Armstrong himself describes
14 these activities as follows:

15 My help to Ford Greene in all of the papers recently filed
16 has been in proofreading, copying, collating, hole-punching,
17 stapling, stamping, packaging, labeling, air freighting, and
18 mailing. Mr. Greene and I have had several conversations during
19 this period, some of which certainly concerned the litigation.

20 [Ex. 1L to Request, Declaration of Gerald Armstrong (minus exhibits) at ¶
21 18. See also, Ex. 1M to Request, Declaration of Ford Greene, ¶ 7.]
22 Indeed, Armstrong's presence in Greene's offices has been continuous
23 throughout December, 1991, and shows no sign of cessation. [Ex. 5,
24 Declaration of Laurie J. Bartilson.]¹⁰

25 On October 3, 1991, the Church filed a motion in Los Angeles Superior
26 Court.

27 ¹⁰ In addition to the paralegal services Armstrong claims he provided the
28 Aznarans, Armstrong also provided the Aznarans with a declaration, dated
August 26, 1991, and filed in that case. [Ex. 1N to Request.] Armstrong's
declaration describes some of his experiences with and concerning the
Church, in direct violation of paragraphs 7(H), 7(G) and 10 of the
Agreement, and purports to authenticate copies of documents whose contents
he agreed, in paragraph 10 of the Agreement, never to reveal. [Id.,
Exhibits 1 and 2.]

1 On October 3, 1991, the Church filed a motion in Los Angeles Superior
2 Court for enforcement of the Settlement Agreement and for liquidated
3 damages due to Armstrong's breaches of the Agreement. In Armstrong's
4 papers and at the hearing of the matter, Armstrong did not deny that he has
5 committed the multiple breaches which provoked the filing of the motion,
6 and he did not deny that his activities violated the specific provisions of
7 the Settlement Agreement cited in the moving papers.¹¹ Instead, Armstrong
8 raised the tired refrain that he had been under "duress" when he executed
9 the Agreement. Armstrong repeatedly raised this pretense and his alleged
10 "fear" of the Church before Judge Breckenridge, the trial judge in the
11 earlier, settled matter. It is, however, thoroughly belied by the approval
12 of the Agreement by Armstrong's attorney, and by Armstrong's conduct at the
13 time he signed the Agreement.¹² If anything, Armstrong has become bolder

14 reveal. [Id., Exhibits 1 and 2.]

15 ¹¹ Indeed, Armstrong's response to the motion was in part to boast that
16 not only had he committed the violations in question, he had never
17 intended to abide by the Agreement at all. In a declaration dated
18 November 17, 1991, Armstrong asserts that he read all of the clauses at
19 issue here and understood their import at the time he signed the
20 Agreement, but objected to them to his own lawyers and told his lawyers
21 he never intended to follow them. [Ex. 1P, Declaration of Gerald
22 Armstrong, ¶¶ 12-14.] Armstrong asserts that he "put on a happy face"
and went through the charade of signing the Agreement anyway, so that he
could have from the settlement the "financial wherewithal" to "get on
with next phase of [his] life." [Id., ¶ 17.] Naturally, Armstrong never
expressed to the Church or its lawyers that he had no intention of
honoring his Agreement when he signed the papers. If he had, the Church
would never have agreed to pay him anything.

23 ¹² Moreover, the credibility of this refrain is shattered by Armstrong's
24 own words, uttered months after obtaining a defense judgment in the
25 original Armstrong action based on his spurious claim of being under
26 "duress" due to his "fear" of the Church. In the November, 1984
videotaped conversations with Joey referred to above, the following
exchange took place while Armstrong was discussing his plans for
destroying the Church:

JOEY: Well, you're not hiding!

ARMSTRONG: Huh?

JOEY: You're not hiding.

ARMSTRONG: F--- no! And. . .

1 become bolder as time has passed.

2 The Church's showing in support of the motion to enforce the
3 Settlement Agreement consisted of uncontroverted evidence that Armstrong
4 had violated paragraphs 10 and 7(G) of the Settlement Agreement by:

5 1) Providing aid to the Aznarans in their lawsuit against the
6 plaintiff via employment by Yanny as a paralegal;

7 2) Aiding Yanny in litigation against the Church by voluntarily
8 filing declarations on Yanny's behalf; and

9 3) Helping Ford Greene as a paralegal on the Aznaran case, and by
10 voluntarily providing declarations for filing by Greene in that case.

11 Not one word of Armstrong's opposition was devoted to challenging
12 those proven accusations. However, the Court, the Honorable Bruce R.
13 Geernaert presiding, did not address the merits, holding instead that there
14 was no jurisdiction to decide the motion.

15 While the Church has no interest in pursuing a multiplicity of suits,
16 Armstrong's own conduct demonstrates not an isolated incident, but an
17 ongoing campaign, no different from his earlier campaign of hatred and
18 harassment. With a new action now before the Court, an injunction should
19 and must issue to preserve the Church's rights pending trial.

20 III. ARGUMENT

21 A. An Injunction May Be Granted To Prevent The Breach Of A Contract The 22 Performance Of Which Would Be Specifically Enforced

23 C.C.P. § 526 empowers the court to grant an injunction to prevent a
24 breach of a contract if the contract is one which may be specifically
25 enforced. C.C.P. § 526; see also, Steinmeyer v. Warner Consolidated Corp.
26 (1974) 42 Cal.App.3d 515, 518, 116 Cal.Rptr. 57, 60 ("An injunction cannot
27 be granted to prevent breach of a contract which is not specifically
28 enforceable."); Southern Christian Leadership Conference of Greater Los

1 Angeles v. Al Malaikah Auditorium Co. (1991) 230 Cal.App.3d 207, 281
2 Cal.Rptr. 216. The Agreement at issue is one which may be specifically
3 enforced by this Court as the contract is sufficiently definite and certain
4 in its terms, it is just and reasonable, the plaintiff has performed its
5 side of the bargain, Armstrong has breached the contract, the Agreement was
6 supported by adequate consideration, and the Church's remedy at law is
7 inadequate. Taramind Lithography Workshop, Inc. v. Sanders (1983) 143
8 Cal.App.3d. 571, 575, 193 Cal.Rptr. 409, 410.

9 Further, while the Agreement contains a liquidated damages provision,
10 it is a well-settled statutory principle that a contract providing for
11 liquidated damages does not prevent the contract from being specifically
12 enforceable. Civil Code § 3389. Accordingly, the Court is empowered to
13 grant a preliminary injunction to enjoin Armstrong from further breach.

14 **B. Preservation of the Status Quo and Prevention of Irreparable Injury**
15 **Requires the Court to Grant Plaintiff's Application**

16 While C.C.P. § 526(5) deters the granting of injunctions to prevent
17 the breach of a contract "the performance of which would not be
18 specifically enforced," this Agreement is patently specifically
19 enforceable. Indeed, Scientology's former Mother Church, the Church of
20 Scientology of California ("CSC"), has already obtained injunctions and
21 specific performance of similar settlement agreements.

22 In Wakefield v. Church of Scientology of California (11th Cir. 1991)
23 ___ F.2d ___ (Slip Op., Exhibit 1R to Request), CSC obtained specific
24 performance of an agreement substantially similar to this Agreement. CSC
25 moved to enforce the provisions of the settlement agreement, and the
26 district court ordered hearings before the magistrate judge, who concluded
27 that Wakefield had violated the agreement. The district court adopted the
28 magistrate judge's findings, and issued a preliminary and permanent

1 injunction prohibiting Wakefield from violating the agreement. Id. When
2 Wakefield violated the injunction, again making media appearances, CSC
3 sought an order to show cause why Wakefield should not be held in contempt.
4 At an in camera proceeding, the magistrate judge found that Wakefield had
5 willfully violated the injunction, and recommended that the case be
6 referred to the United States Attorney's office for criminal contempt
7 proceedings. Id. at 4628.

8 Although the district court's issuance of the injunction in Wakefield
9 was not at issue in the Eleventh Circuit proceedings, the Eleventh Circuit
10 described in its opinion, "Wakefield's constant disregard and misuse of the
11 judicial process," suggesting approval of the district court's actions.
12 Id. at 4630.

13 Similarly, in McLean v. Church of Scientology of California (11th Cir.
14 1991) ___ F.2d ___ No. 89-3505 [separately Filed with this Court on April 28,
15 1992, Notice of Filing], plaintiff McLean also entered into a settlement
16 agreement containing confidentiality provisions preventing her from
17 discussing the litigation with anyone outside her immediate family. Id. at
18 2. By her own testimony, McLean admitted to reacquiring certain documents
19 and using them to "counsel" Church members. She further admitted to
20 discussing certain aspects of the suit with people outside her immediate
21 family. Id. at 3. As a result, the appellate court affirmed the district
22 court order permanently enjoining McLean from disclosing any information
23 about her lawsuit and the resulting settlement agreement. Id. at 6.

24 Just as the district courts in Wakefield and McLean found it necessary
25 to issue an injunction to enforce the agreement of the parties, so must
26 this Court issue a preliminary injunction to enjoin Armstrong from further
27 breaches. The status quo will be maintained and irreparable injury will be
28 prevented only by entering such an order.

1 **1. The Status Quo Will Be Maintained**
2 **Only By Granting Plaintiff's Motion**

3 The status quo sought to be maintained by the Church is the
4 achievement by both sides of the benefits of the Agreement -- the status
5 quo which existed when, in December 1986, the Church and Armstrong were
6 fully performing their obligations under the Agreement. By repeatedly
7 violating the Agreement, Armstrong has destroyed the peace for which the
8 Church lawfully bargained. Absent the order the Church seeks, the damage
9 and corruption caused by Armstrong's outright and continuing breaches of
10 the Agreement will spread even further than it already has.

11 The fact that Armstrong intends to continue his transgressions and
12 damage the Church could not be any plainer. Indeed, Armstrong has already
13 made it overwhelmingly clear that he has deliberately breached the
14 Agreement by his own actions in aiding Yanny and Ford Greene in litigation
15 adverse to the Church and in his own statements made in his declarations
16 filed in the Aznaran case. Therefore, the Church requests that the Court
17 compel Armstrong to cease assisting parties with interests adverse to the
18 Church and to abide by the terms of the Agreement.

19 **2. The Church Will Be Irreparably Harmed**
20 **Absent the Issuance of an Injunction**

21 Not only is Armstrong assisting adversaries of the Church, he is doing
22 so to foster and perpetuate relentless litigation against the Church to
23 serve his own ends. Armstrong's conduct is continuous, oppressive and
24 malicious and has been undertaken for the express purpose of injuring
25 plaintiff. Only an injunction pending trial has any hope of stopping
26 Armstrong from waging his malicious, relentless and senseless war.

27 C.C.P. § 526 provides that an injunction can be granted when it
28 appears by complaint or affidavit that the commission of some act during
29 the continuance of the action would produce great or irreparable injury to

1 a party to the action (subdivision 2) or when it appears that a party to
2 the action is doing, or threatening to do, some act in violation of the
3 rights of another respecting the subject of the action and tending to
4 render the judgment ineffectual (subdivision 3). Here, an injunction is
5 needed to prevent Armstrong from continuously breaching the Agreement and
6 fomenting litigation against the Church while the Church awaits trial and
7 judgment on the merits. Although some of Armstrong's breaches are subject
8 to a liquidated damages clause, others, including the continual violations
9 which he is engaging in through his employment by Ford Greene, are not. It
10 is these continual violations, which no monetary award can remedy, which
11 the Church seeks to enjoin.¹³

12 C. A Balancing of the Equities Requires
13 The Court to Grant Plaintiff's Motion

14 In determining whether to grant injunctive relief, the Court must
15 balance the equities before it and exercise its discretion in favor of the
16 party most likely to be injured. Robbins v. Superior Court (1985) 38
17 Cal.3d 199, 205, 211 Cal.Rptr. 398, 402. In balancing the equities, the
18 Court considers two interrelated factors: (1) the likelihood that plaintiff
19 will prevail on the merits; and (2) the interim harm that plaintiff is
20

21 ¹³ No remedy may be available to the Churches in the form of liquidated
22 damages in any case. Armstrong has asserted by declaration that he is
insolvent, saying,

23 "I have attempted to obtain an attorney to represent me specifically
24 in the motion to enforce now before the court, but have so far been
25 unsuccessful. I do not have the wherewithal to retain any attorney
who would require a fee to defend me." [Ex. 1Q to Request.]

26 Armstrong's asserted insolvency made the guarantee of liquidated damages an
empty promise, and renders the Churches' damage, even for these breaches,
irremediable. West Coast Construction Company v. Oceano Sanitary District
27 (1971) 17 Cal.App.3d 693, 95 Cal.Rptr. 169.

28

likely to suffer if the injunction is denied as compared to the harm that defendants are likely to suffer if the injunction is granted. Id. at 206.

1. Plaintiff Is Likely To Prevail On The Merits

It is clear that the Church is likely to succeed on the merits. The Church has submitted an overwhelming factual showing, which provides thorough detail of Armstrong's willful injurious conduct and overt violations of the Agreement. The Verified Complaint and the Declarations of Lawrence E. Heller, Exhibit 4, and Laurie J. Bartilson, Exhibit 5, supply only a portion of the facts for the Church's likelihood of success on the merits. In addition, Armstrong's own statements, made in declarations filed in the Aznaran case, as well as his own conduct, form the best evidence that he has breached and will continue to breach the Agreement, until this Court enjoins his violative conduct.

2. The Interim Harm That Plaintiff Will Suffer Absent An Injunction Exceeds Any Harm to Armstrong If Injunctive Relief Is Granted

Armstrong has no equities whatsoever in this action. No one has any right to continue to violate a settlement agreement. Armstrong's only "injury" if he is enjoined is that he will not be able to violate the Agreement in the future. On the other hand, the harm that will be suffered by the Church absent injunctive relief is the irreparable harm of being victimized by Armstrong's violations, while others with interests adverse to the Church benefit in legal proceedings from an unfettered flow of breached obligations, wrongful disclosures and legal infidelity. Thus, the balancing of the equities unquestionably favors the Church.

IV. CONCLUSION

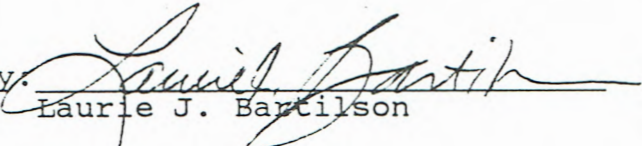
In December, 1986, the Church bought an expensive peace from Armstrong. Its members thought, and reasonably, that the negotiated peace was desired by both sides, and permanent, its terms both clear and fair.

1 Armstrong, his funds allegedly gone, has embarked on a campaign of
2 deliberate breaches reminiscent of the very conduct plaintiff sought to
3 end, in an obvious effort to convince the Church that it must pay for its
4 peace in five-year installments. Such an agreement was neither
5 contemplated nor made. By providing aid, declarations and information
6 which he agreed to keep confidential directly to the Church litigation
7 adversaries, Armstrong has repeatedly, deliberately and continuously
8 breached the Agreement which he signed and for which he accepted a
9 substantial settlement amount. Because Armstrong refuses to stop his
10 continuous contempt for his own agreements, this Court must, on the
11 uncontroverted evidence, much of it from Armstrong's own lips, enjoin him
12 from further breaching his Agreement while this action is pending.

13 Dated: May 7, 1992

Respectfully submitted,

14 BOWLES & MOXON

15
16 By: 
Laurie J. Bartilson

17
18 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

19 Attorneys for Plaintiff
20 CHURCH OF SCIENTOLOGY
21 INTERNATIONAL
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H:\ARMSTRONPRELIM7

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Los Angeles, CA -90028

On May 7, 1992, I served the foregoing document described as AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION FOR BREACH OF CONTRACT on defendants in this action as follows:

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Paul Morantz BY HAND & TELEFAX
P.O. Box 11
Pacific Palisades, CA 90272

Graham Berry BY HAND & TELEFAX
Lewis, D'Amato, Brisbois & Bisgaard
221 N. Figueroa St. Suite 1200
Los Angeles, CA 90012

[] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more

than one day after date of deposit for mailing an affidavit.

Executed on _____ at Los Angeles, California.

[X] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressee.

Executed on May 7, 1992, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie B. [unclear] [unclear]
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

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) ss.
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[X] by placing [] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Ford Greene BY MAIL & TELEFAX
Hub Law Offices
711 Sir Francis Drake Blvd
San Anselmo, CA 94960-1949

[x] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

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Carrie Borth Lawrence B. Borth
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

--oOo--

CHURCH OF SCIENOTOLOGY INTERNATIONAL,
a California not-for-profit religious
corporation,

COPY

Plaintiff,

vs.

No. BC 052395

GERALD ARMSTRONG; DOES 1 through 25,
inclusive,

Defendants.

RECEIVED

AUG 21 1992

HUB LAW OFFICES

DEPOSITION OF
GERALD ARMSTRONG

Wednesday, July 22, 1992

Volume II, Pages 179 - 293

REPORTED BY: KATHERINE NG, CSR NO. 6350

MARY HILLABRAND INC.

CERTIFIED SHORTHAND REPORTERS

520 SUTTER STREET / off UNION SQUARE SAN FRANCISCO, CA 94102

PHONE 415 / 788-5350 FAX 415 / 788-0657

1 there haven't been any communications with the Aznerans.

2 Q. Okay. All right. When was the last time you
3 worked on the Azneran case as a paralegal?

4 A. Well, again, if by that you mean that because
5 I'm a paralegal I answered the phone when Vicky was
6 calling, am I working on the Azneran case as a paralegal?

7 If you say that that's not the case and that's
8 not the way you construe paralegal activity with regard
9 to a case, then I would say that it's quite some time
10 ago.

11 Q. That's how I do understand paralegal activity.
12 It's not just that you answer the phone.

13 A. So it's not just clerical duties that I would
14 do with any, any case?

15 Q. I will define it this way. If you answer the
16 phone because one of your duties is to answer the
17 telephone in the office, that is not a part of your
18 duties as a paralegal on the Azneran case.

19 But if you summarize a deposition, if you
20 prepare pleadings, if you file pleadings, it's a
21 paralegal duty. If you type pleadings, it's a paralegal
22 duty.

23 A. Right. None of those things.

24 Q. When you say "quite some time," can you give me
25 a little bit more specifics on that and how long has it

1 been since you have done any paralegal work on the case?

2 A. Boy, I think probably, I think probably
3 September '91.

4 Q. Okay. Of course paralegal duties would include
5 communications from the Aznerans. Except if the
6 communication was "have Mr. Greene call me," I wouldn't
7 consider that a paralegal duty. But if the communication
8 was anything substantive with regard to the case, I would
9 consider that a paralegal duty, so would that change your
10 answer? Since September of '91, have there been any
11 substantive communications about the case with the
12 Aznerans without revealing the communication?

13 MR. GREENE: That's fine. Go ahead and answer
14 it.

15 THE WITNESS: Okay, then the answer is no.

16 MR. WILSON: Q. Getting back to this
17 declaration, paragraph 3, and the sentence that goes from
18 line 27 onto line 1 through the end of the paragraph
19 which is on page 2 at line 2, you say, quote,

20 "In that declaration, I waived" -- and you
21 refer to a previous deposition -- "I
22 waived the attorney-client privilege
23 between Mr. Flynn and me only to our
24 conversations concerning the settlement,
25 and I reiterate that waiver at this

1 time and extend it to include my other
2 attorneys."

3 Is it true that you intended by this to waive
4 any attorney-client privilege with respect to
5 communications with any of your attorneys concerning the
6 settlement between you and the Church of Scientology
7 which was executed in December of 1986?

8 MR. GREENE: Before he answers, so we're clear,
9 we stated in the beginning that the same stipulations
10 that were reserved last time apply today. And just so
11 we're clear, that goes to the form of the question as
12 well as to what is going to happen with the transcript;
13 right?

14 MR. WILSON: Right.

15 MR. GREENE: Go ahead and answer the question.
16 I want to be sure. Because we said the same
17 stipulations, I didn't want to run into any confusion.

18 THE WITNESS: Hold on. Just so I understand,
19 "... as to our conversations concerning the settlement,
20 and I reiterate that waiver at this time and extend it to
21 include my other attorneys," that was -- now, you have a
22 question regarding those other attorneys?

23 MR. GREENE: No. His question is whether or
24 not you meant to give up the attorney-client privilege
25 with respect to communications you had with Michael Flynn

1 and perhaps others prior to the settlement agreement.

2 MR. WILSON: Q. Mr. Greene's characterization
3 is correct.

4 A. Concerning the settlement?

5 Q. Right.

6 A. Right?

7 Q. Right.

8 A. You mean prior to?

9 Q. I can go at it this way. Before you signed the
10 settlement agreement in 1986, you talked to Mr. Flynn
11 about it; right?

12 A. Right.

13 Q. And you talked to Michael Walton about it?

14 A. Right.

15 Q. And did you talk to any other attorneys about
16 it?

17 A. I was meeting the other attorneys that I am
18 referring to here at Contos & Bunch. I was represented
19 by Juliet, Jolliet and Bunch at that time, and they were
20 involved in the settlement at that time.

21 Q. So you didn't mean this, you didn't mean this
22 waiver to apply to Michael Walton, is that what you're
23 saying?

24 A. Right.

25 Q. But at the time you executed this declaration,

1 you knew you had consulted with Mr. Walton about the
2 settlement; is that right?

3 A. Right.

4 Q. Are you acquainted with a man named John
5 Elstead?

6 A. Yes.

7 Q. When did you meet Mr. Elstead?

8 MR. GREENE: I don't want to be difficult,
9 Andy, but didn't we go through this the last time?

10 MR. WILSON: I don't think so. Give me a
11 minute and I'll check.

12 MR. GREENE: I believe we did. If it's
13 preliminary, I don't care.

14 MR. WILSON: It is preliminary.

15 MR. GREENE: Go ahead.

16 MR. WILSON: Q. Have you worked as a paralegal
17 for Mr. Elstead?

18 A. Although I did not work in Mr. Elstead's office
19 and did not report directly to him, because he was an
20 attorney of record on the Azneran case and because I
21 worked on the Azneran case, then in that sense, yes, I
22 did.

23 Q. Okay. And I take it then that in that
24 connection you didn't report to Mr. Elstead for any of
25 your duties; is that right?

5 1 A. I think that Mr. Elstead was aware, at least to
2 some degree, what I was doing, but as I say, I was in a
3 different geographic location, not in his office. And
4 although I believed that I recall relaying communications
5 to him, I did not in the same way that I reported to Mr.
6 Greene as my sort of direct senior, I didn't report in
7 that way to Mr. Elstead.

8 Q. And did Mr. Elstead ever assign you any tasks
9 to perform in the Azneran case directly?

10 A. I have a recollection of him asking for --

11 MR. GREENE: Wait. Acceptable for a "yes" or
12 "no" answer. I do not want you to disclose the substance
13 of any directions given to you by Mr. Elstead and
14 instruct you not to do so.

15 THE WITNESS: If that's the case, then I cannot
16 recall a specific time.

17 MR. WILSON: Q. Okay. So is the answer that
18 he may have assigned you specific tasks or may not have,
19 and you just don't remember?

20 A. I was going to say because it doesn't get down
21 to the assignment of specific tasks, but whether or not
22 he may have asked for something which he could have asked
23 for from anyone.

24 Q. Okay. I understand. And I take it that your
25 involvement in the Azneran case is directly involved with

1 Mr. Greene's involvement. When Mr. Greene substituted
2 out of the case, you were not involved; is that right?

3 A. I'm not sure what that means.

4 MR. GREENE: I'll give a token objection that
5 that assumes facts; namely, that Armstrong worked for me
6 prior to the in and out that occurred a year ago.

7 MR. WILSON: Okay. I'm not aware of that. I'm
8 not aware of the dates of it except generally knowing at
9 some point you were in and you were out.

10 MR. GREENE: And I was back in again.

11 MR. WILSON: Right.

12 THE WITNESS: I think he may be referring to
13 the more recent --

14 MR. GREENE: No, listen to the question.

15 MR. WILSON: Q. Are you aware at one point
16 that Mr. Greene was counsel to the Aznerans, and then was
17 no longer counsel of record, and is counsel of record
18 again? Are you aware of that?

19 A. Yes.

20 Q. Were you aware at the time Mr. Greene ceased
21 being counsel of record, which I believe was sometime in
22 1991, that he had ceased being counsel of record?

23 A. I was not aware of that fact at the time, but I
24 became aware of it at some time after it happened.

25 Q. Okay. Do you know whether it was days, weeks

1 or months after it happened that you became aware of it?

2 A. Probably weeks.

3 Q. And you are aware now that Mr. Greene has again
4 been associated as associate of record in that case?

5 A. Right.

6 Q. And I take it you were aware of that fact
7 approximately at the time it happened?

8 A. Yes.

9 Q. And in the intervening period when Mr. Greene
10 was not counsel of record, I take it you did no work on
11 the Azneran case at all?

12 A. Again when you say no work on the Azneran case,
13 we're using the same definition of paralegal?

14 MR. GREENE: Gerry, it's a simple question and
15 again it's a "yes" or "no" answer.

16 THE WITNESS: In that I received phone calls at
17 that time or relayed phone calls then which may have
18 related to the Azneran case, then, yes, I did.

19 MR. WILSON: Q. It's possible that you may
20 have relayed a phone message that related to the Azneran
21 case; is that right?

22 A. Right.

23 Q. Except for that, have you done any work on the
24 Azneran case?

25 A. Except for phone messages?

1 Q. Right.

2 A. Routed or logged, mailed articles.

3 Q. Would that be the same way a receptionist or
4 secretary would send mail around the office?

5 A. Exactly, right.

6 Q. And except for that, have you done anything
7 related to the Azneran case?

8 A. I believe that anything I have done relating to
9 the Azneran case has been that sort of office clerk,
10 secretary in nature.

11 Q. Can you remember any of the specific things
12 that you have done, whether they're office clerk,
13 secretary or not?

14 MR. GREENE: And just a sec, can we get this
15 clear? This series of questions started out, according
16 to my recollection, directed toward the hiatus period
17 when I had been counsel, then I was not counsel. Now,
18 you're asking if it was in the in-between time?

19 MR. WILSON: That's right.

20 MR. GREENE: So now the scope unintentionally
21 has broadened, so that's okay. If we're going back to --

22 MR. WILSON: No, we're not.

23 MR. GREENE: -- pre-September '91.

24 I want to make sure the question is clear,
25 because your question is less clear to me.

1 MR. WILSON: Q. I'm only talking about the
2 period when Mr. Greene was out of the Azneran case.

3 A. Before July of '91?

4 MR. GREENE: No.

5 MR. WILSON: Q. Whenever he got out of the
6 Azneran case, between that time and the time he got back
7 in.

8 A. So like June of '91 through July of '91.

9 MR. GREENE: July 24.

10 THE WITNESS: So from June 6 '91 through July
11 of '91, no, I didn't do any of those things.

12 MR. WILSON: I thought that.

13 MR. GREENE: There's a fundamental factual
14 problem there. There's two --

15 MR. WILSON: I was speaking of the later one.

16 MR. GREENE: Because there was some time I
17 believe in February of '92 to earlier this month where
18 Elstead was the sole attorney of record for the Aznerans.

19 MR. WILSON: Q. That's the period of time when
20 I'm talking about, February of '92 until the time Mr.
21 Greene recently substituted back into the case.

22 A. So whenever, back to your definition of
23 paralegal work, I didn't do any.

24 Q. And anything you did was taking messages or
25 routing documents; is that correct?

1 A. The secretarial work for Mr. Greene.

2 Q. And can you remember any specific things you
3 did, whether it was secretarial or not?

4 A. Without getting into exactly what they were,
5 that is, the subject matter, copying, mail logging,
6 routing, relaying messages, taking messages.

7 Q. Okay. Let me ask you this question. Back to
8 Mr. Elstead, have you done any other work for Mr.
9 Elstead, other than on the Azneran case?

10 MR. GREENE: In any capacity?

11 MR. WILSON: Right.

12 THE WITNESS: In that Mr. Elstead requested me
13 to testify in the Hunziker case and that I did agree and
14 in that I did testify at deposition, that's what I did
15 for him.

16 MR. WILSON: Q. And what is the Hunziker case?

17 A. It's the case of Steven Hunziker versus Applied
18 Materials.

19 Q. And what did Mr. Elstead ask you to do in that
20 case?

21 A. He asked me if I would testify.

22 Q. In what capacity? What did you know about the
23 case that he wanted you to testify about?

24 A. The case involved Scientology courses being
25 taught at the Applied Materials Company, and he wanted me

JUL 16 1992

Superior Court of California
County of Los Angeles
Los Angeles, California

HUB LAW OFFICES

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CHURCH OF SCIENTOLOGY,
INTERNATIONAL, etc.

Plaintiff,

vs.

GERALD ARMSTRONG, ET AL.,

Defendant.

Docket No. BC 052-395

Los Angeles, California
May 27, 1992
8:30 a.m.

MOTION FOR PRELIMINARY INJUNCTION

THE HONORABLE RONALD M. SOHIGIAN, PRESIDING

COURT RECORDER:

J.W. CRUSE

TRANSCRIPTION BY:

PARRIS TRANSCRIPTS
P.O. Box 41754
Los Angeles, CA 90041-9998
(213) 254-4157

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

1 declaration.

2 MR. GREENE: Oh, yeah.

3 THE COURT: He may have. The question is why it
4 wasn't introduced yesterday? What makes it rebuttal?

5 MR. WILSON: The reason it's rebuttal, Your Honor,
6 is because Mr. Greene introduced evidence yesterday about
7 suppression of evidence. And I would've introduced it
8 yesterday but when you closed the proceedings you said
9 evidence is closed, we're going to have argument, and you left
10 the bench. And I didn't have time to look at my notes and see
11 it. And I apologize for that.

12 THE COURT: I don't think that's a candid
13 description of your conduct or of the realities of the hearing
14 at all. And the record should reflect that. That's just not
15 an accurate statement of the way this case has been handled.
16 You people have had virtually infinite time within which to
17 prepare and present your case. The force, if there is any, to
18 Mr. Greene's concern is that there is -- there has been plenty
19 of time for everybody to do everything that you've needed to
20 do.

21 (Pause)

22 MR. GREENE: Your Honor, the transcript is -- a
23 number of pages -- I don't know whether I should take -- I've
24 got to read it if we're going to have to address it.

25 MR. WILSON: Only the portion quoted in our reply
26 brief.

27 MR. GREENE: Well, we -- that's -- Your Honor, there
28 are matters that were --

1 THE COURT: Did you discuss this yesterday when you
2 left here?

3 MR. GREENE: No.

4 MR. WILSON: No.

5 THE COURT: What is the matter with you, gentlemen?
6 What's the problem? Is this kind of amateur night or
7 something, at the old courthouse? Does it occur to you that
8 when you spend an entire day going through evidentiary
9 objections, if you have something else that you want to put it
10 it might be worthwhile to discuss it with one another? Mr.
11 Wilson?

12 MR. WILSON: I apologize for that, Your Honor.

13 THE COURT: Do you apologize or was that part of a
14 program on your part to use whatever weight and muscle you
15 could use to take advantage of the defendant?

16 MR. WILSON: It was not part of any program, Your
17 Honor. It was not part of any program. We haven't done
18 anything to do that.

19 THE COURT: I don't believe you. I think that there
20 was no legitimate reason for your not having discussed this
21 matter with Mr. Greene last night. We recessed before 4:00
22 o'clock, a few moments before 4:00 to be sure, but it was
23 before 4:00 o'clock. There was absolutely no reason for this
24 matter not to have been taken up fully by the lawyers so that
25 I would not be met with this complaint by Mr. Greene that he's
26 going to have to sit there and read a transcript.

27 I just think that's an absolute affront. And I
28 think that the conduct of this litigation has similarly been

1 an effort on the part of the parties to abuse each other,
2 heedless of the point that what they were doing also was
3 abusing the public by, in effect, requiring some judicial
4 officer to go through an effort to try to unravel the mess
5 that they have created.

6 MR. WILSON: Your Honor, the evidence that we
7 submitted was very directed to the issues. We did not submit
8 masses of evidence to this Court.

9 THE COURT: That doesn't make any difference. You
10 sat here all day long, two lawyers, both with pencils in your
11 hand, and you didn't think to -- and this is Bartilson's
12 declaration. Who is Bartilson? The lawyer sitting to your
13 left. The suggestion that it came to you only after you had a
14 chance to review your notes that you were going to use the
15 declaration of your own colleague, one of the attorneys of
16 record for your client as further evidence in this case,
17 really strains anybody's capacity for flexible belief. And it
18 certainly strains mine. I just don't believe it. And I my
19 observation of the apparent ability of counsel, not their care
20 and concern for preserving the appropriate level of just
21 proceedings but their raw ability, reinforces my lack of
22 belief.

23 MR. WILSON: Your Honor, I've listened to your
24 comments. I withdraw the proffer of evidence, and I will rely
25 on what's been submitted yesterday.

26 THE COURT: Go ahead with your argument.

27 MR. WILSON: Thank you, Your Honor.

28 This case is really very simple. It involves a

1 of Plaintiff's Amended Motion, et cetera.

2 THE COURT: Go ahead with your review of the
3 evidence concerning what you think are Armstrong's acts in --
4 wait a minute before we do that. You contend that the
5 declaration in the Aznaran case is a 7-G?

6 MR. WILSON: That's correct.

7 THE COURT: Go ahead with any other review of
8 evidence concerning acts that you contend Armstrong has
9 committed which you contend to be in violation of the --

10 MR. WILSON: He gave --

11 THE COURT: -- agreement and which should be
12 restrained, and give your agreement citation.

13 MR. WILSON: That is -- another one would be the
14 declaration of Gerald Armstrong dated 7-16-91 in the Yanny
15 case. That is Exhibit 1-K in the same packet, right before
16 the -- actually, as long as you're looking, it's J and K;
17 they're both declarations of Armstrong, dated 7-16-91. And
18 whether we want to consider them one violation or two appears
19 to me to be of very little consequence.

20 THE COURT: Well, let's take Exhibit K. That talks
21 about a conversation to which Armstrong claims he was a
22 witness which allegedly occurred on July 16, 1991.

23 MR. WILSON: Correct.

24 THE COURT: Your view is that he would prohibited
25 from doing that?

26 MR. WILSON: My view is he's prohibited from
27 voluntarily giving a declaration. It's not that he's --

28 THE COURT: Well, do you mean to say that there need

1 be no nexus between Armstrong's behavior on the one hand and
2 something having to do with information that he has because of
3 his affiliation with your client on the other hand?

4 MR. WILSON: Like --

5 THE COURT: In other words, if somebody -- let's say
6 that this is what's happening. Let's say that there is a
7 lawsuit in which your client is involved and he is a witness
8 to something but it does not depend on his having preexisting
9 information concerning your client. Let's assume for example
10 that he's here in court and a lawsuit is going on. And on the
11 way out the lawyers get into a fight. One of the lawyers
12 says, look Armstrong, give a declaration will you to show that
13 the other fellow took the first punch and he says, well all
14 right, I'll do it. And he does.

15 The lawyer who asks for the declaration is adverse
16 to Scientology and adverse to -- in that lawsuit, and adverse
17 to the other person who hit him. Your contention is that that
18 would be improper?

19 MR. WILSON: Well, to be honest with you, I haven't
20 thought of that particular situation.

21 THE COURT: The reason you haven't thought of it is
22 because the language in the agreement is susceptible of
23 potentially indeterminate interpretations; correct?

24 MR. WILSON: Well, I suppose you could say that. I
25 don't believe it's susceptible to those determinations. I
26 think that if Armstrong is aiding persons adverse to
27 Scientology he's not supposed to do that and if he's doing it,
28 and let's use your hypothetical. If the lawyer wants to use

1 Mr. Armstrong's testimony all he has to do is take a
2 deposition. You can take any agreement and make a
3 hypothetical that perhaps wasn't intended to be covered by the
4 language but which is in fact covered by it.

5 THE COURT: Well no, what we're trying to do is
6 we're trying to construe the agreement reasonably so that we
7 know what it means to quote "voluntarily assist or cooperate
8 with any person adverse to Scientology in any proceeding
9 against any of the Scientology organizations" and so forth,
10 end quote. Voluntary assistance or cooperation doesn't mean
11 voluntarily assistance or cooperation which doesn't trade on
12 some special talent or skill that Armstrong has.

13 What if, for example, there's a lawsuit between
14 Scientology on the one hand and the Red Cross.

15 MR. WILSON: Your Honor --

16 THE COURT: Armstrong gives money to the Red Cross.
17 He says I think it's good, I think people ought to be helpful
18 when they have floods. You certainly wouldn't be able to beef
19 about --

20 MR. WILSON: Obviously --

21 THE COURT: -- that, would you?

22 MR. WILSON: Obviously not. I mean, obviously the
23 intent of the agreement was that there had to be some
24 connection between what Armstrong was doing and what he had
25 previously been involved with with the organization. And in
26 this declaration there really is. I mean, he's with Yanny
27 because of his previous connection with the organization.
28 He's helping Yanny because of his previous connection with the

1 organization; he's not helping Yanny because he just happens
2 to be there, as in your hypothetical where he just happens to
3 be in court. I think that is a distinction that needs to be
4 made.

5 THE COURT: The distinction that I would make, the
6 question is whether the contract makes that distinction.

7 MR. WILSON: Well, the contract doesn't explicitly
8 make that distinction but it says "voluntarily aiding persons
9 adverse to Scientology." And I think in your hypothetical,
10 particularly the Red Cross hypothetical, obviously there has
11 to be some reasonable construction of the contract. And no
12 contract -- I mean I submit to Your Honor that any contract
13 can be -- you can do to any contract what you did with this
14 hypothetical to this one. You can make a hypothetical that is
15 not covered by it but that obviously the parties entered into
16 it would not contend the situation applied. There's -- we
17 would not go to court and try to restrain Mr. Armstrong from
18 giving money to the Red Cross.

19 THE COURT: What other acts do you contend the -- so
20 you contend this is a 7-G violation?

21 MR. WILSON: That's right.

22 THE COURT: What other acts do you contend the
23 evidence shows Armstrong committed in what you claim to be a
24 violation of the agreement which under your client's theory --

25 MR. WILSON: I think that --

26 THE COURT: -- ought to be restrained?

27 (Counsel Colloquy)

28 MR. WILSON: I believe that Exhibit E to Mr.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 86

HON. DIANE WAYNE, JUDGE

CHURCH OF SCIENTOLOGY,

Plaintiff,

vs.

GERALD ARMSTRONG, et al.,

Defendants.

NO. BC 052 395

TRANSCRIPT OF PROCEEDINGS

March 5, 1993

APPEARANCES:

(See appearance page.)

COPY

COURT MONITOR:
TRANSCRIPTION BY:

E. VELASCO
FOX TRANSCRIPTIONS

1 APPEARANCES:

2 For Plaintiff:

ANDREW WILSON
Attorney-at-Law
Suite 450
235 Montgomery
San Francisco, CA 94104
(415) 391-3900

6 BOWLES & MOXON
7 BY: LAURIE J. BARTILSON
Suite 2000
8 6255 Sunset Boulevard
Hollywood, CA 90028
9 (213) 661-4030

10 For Defendants:

HUB LAW OFFICES
11 BY: FORD GREENE
711 Sir Francis Drake Boulevard
12 San Anselmo, CA 94960
(415) 258-0360

13 PAUL MORANTZ
14 Attorney-at-Law
P. O. Box 511
15 Pacific Palisades, CA 90272
(310) 459-4745

1 LOS ANGELES, CALIFORNIA, FRIDAY, MARCH 5, 1993, A.M.

2 DEPARTMENT NO. 86

HON. DIANE WAYNE, JUDGE

3
4 THE COURT: Church of Scientology versus Armstrong.

5 MR. WILSON: Good morning, Your Honor.

6 Andrew Wilson and Laurie Bartilson appearing on
7 behalf of the plaintiff, Church of Scientology.

8 MR. GREENE: Good morning, Your Honor.

9 Ford Greene and Paul Morantz on behalf of Gerald
10 Armstrong, who is sitting at the end of counsel table.

11 MR. WILSON: Your Honor, before we begin I'd like to
12 ask the court's permission to have Mr. Michael Hertzberg sit
13 at counsel table with me. He's not counsel in this action.
14 He's a New York attorney who represented my client in the
15 previous Armstrong action on the appeal.

16 THE COURT: It won't be necessary because we're not
17 going to go very far.

18 Gentlemen, let me ask -- I'm sorry.

19 MR. WILSON: Okay.

20 THE COURT: This case is on appeal?

21 MR. WILSON: Yes.

22 THE COURT: And it just seems to me -- you're the
23 moving party?

24 MR. WILSON: That's correct.

25 THE COURT: It seems to me ridiculous to hold this
26 hearing prior to a determination whether or not this is a
27 valid order. I mean, I have some serious questions about the
28 validity of the order. And I'm not prepared to waste my

1 time, if it's going to be heard. And apparently it's going
2 to be heard very soon, because the briefs have already been
3 filed and one is left to be filed; is that correct?

4 MR. GREENE: Actually, Your Honor, the respondent's
5 brief is due. Scientology's brief is due on March 22nd.

6 THE COURT: The respondent being the moving party here?

7 MR. GREENE: Being the moving party here and the
8 plaintiff in the action. And, as we noted in a footnote in
9 our papers and we were going to call the court's attention to
10 that fact again this morning.

11 THE COURT: It just seems like an inordinate waste of
12 our time.

13 MR. WILSON: May I address that point?

14 THE COURT: Sure. You can address, but --

15 MR. WILSON: And I will attempt to convince you.

16 THE COURT: You're not. Especially after seeing all
17 the papers you filed.

18 MR. WILSON: The point here is not whether
19 Judge Sohigian made an error.

20 THE COURT: No, no. I absolutely agree and I would not
21 relitigate the validity of the order and I'm not going to
22 relitigate that. And I think you're absolutely right. But
23 it does have to be a valid order.

24 Now, I don't know how broadly or narrowly you
25 find that but I think that it's stupid for me to waste my
26 time, your time, deciding whether or not Mr. Armstrong is in
27 actual contempt of an order that may be set aside.

28 MR. WILSON: I agree it would not be a good use of your

1 time.

2 THE COURT: Well, I don't mean that my time is so
3 valuable. I don't mean it in that sense.

4 MR. WILSON: It would not be a good use of judicial
5 time, but I don't believe that any of the issues --

6 THE COURT: That's not my personal time that I'm
7 talking about.

8 MR. WILSON: I don't believe that any of the issues
9 that are going to be addressed on appeal will solve the
10 problem of whether Mr. Armstrong should be held in contempt
11 for this very simple reason:

12 The cases say that the only excuse that
13 Mr. Armstrong could have for violating this court's order
14 would be if the court did not have jurisdiction. And the
15 cases talk about what that jurisdiction is and it's either
16 personal jurisdiction and subject matter jurisdiction.

17 There's no question that Judge Sohigian had
18 jurisdiction to issue this order. Mr. Greene tries to
19 bootstrap his arguments, which are essentially arguments that
20 Judge Sohigian's order was wrong, into arguments that
21 Judge Sohigian did not have jurisdiction.

22 But if you look at the cases that we've cited --
23 and I think this is a very important point -- particularly
24 the Walker v. City of Birmingham case, where in that case
25 there was an injunction issued against people marching, a
26 Civil Rights march, that involved the infamous Bull Connor,
27 who didn't give them a permit. A court enjoined them; they
28 violated the injunction and it went all the way up to the

1 Supreme Court.

2 And the Supreme Court said it doesn't matter this
3 ordinance was unconstitutional; it doesn't matter whether
4 your rights of free speech were violated. What matters is
5 you cannot disobey the order of the court.

6 And in the Walker case the Supreme Court made a
7 statement, and I'd like to read it to you briefly. And the
8 court said, "Without question, the state court that issued
9 the injunction had, as a court of equity, jurisdiction over
10 the petitioners and over the subject matter of the
11 controversy. And this is not a case where the injunction was
12 transparently invalid or had only a frivolous pretense to
13 validity.

14 We have consistently recognized the strong
15 interest of state and local governments in regulating the use
16 of their streets and other public places."

17 I submit to the court that the interest here that
18 the court has in making sure its orders are obeyed is at
19 least as strong as the interest of the State in Walker in
20 regulating its streets and public ways.

21 What's going on here is not that Mr. Armstrong is
22 involved in this hearing against the Church of Scientology.
23 This is a case of Mr. Armstrong against this court. There is
24 an order of this court and he violated it. That's what's
25 relevant here and there's no issue before the appellate court
26 that's going to resolve that.

27 THE COURT: Oh, but I think there is. And that's
28 whether or not this is an order --

1 I'll tell you, when I first looked at this order,
2 I thought the order was clear until I then read part of the
3 transcript. Then it became unclear to me. And I think that
4 is in front of the appellate court, whether or not this is an
5 order capable of being followed, because Judge Sohigian's
6 comments that at least it confused me a little bit.

7 So I do think that issue is there and I'm going
8 to put this matter over until I think that will be decided
9 without prejudice to anybody's rights and I would suggest
10 that you return in June. I think that would give us
11 sufficient time.

12 Your Honor, my concern -- and I know this is not
13 before the court, but my concern is that Mr. Armstrong has
14 stated in deposition -- you've probably seen that
15 statement -- he's not going to obey this agreement no matter
16 what a court says.

17 We have put forth numerous instances in which we
18 believe he is --

19 THE COURT: If that's a valid order, each time he
20 disobeys it, he faces five days in jail. I take contempt
21 very seriously. And, I mean, I don't treat it lightly and he
22 just does it at his peril.

23 MR. WILSON: Thank you.

24 THE COURT: All right. Let's pick a date in June. Why
25 don't we make it June 1st.

26 MR. WILSON: May I be able to look at my calendar?

27 THE COURT: Sure.

28 MR. GREENE: These proceedings are being electronically

1 recorded; right, Judge? Could we get a transcript.

2 THE COURT: Yes.

3 MR. GREENE: Thank you, Your Honor.

4 MS. BARTILSON: Your Honor, the case is scheduled for
5 trial May 3rd. Judge Horowitz found no problem with going
6 forward on the trial of this case, despite the appeal. And
7 essentially the message that I hear Mr. Armstrong being told
8 is you do the contempt at your peril, but by filing an
9 appeal, no matter how frivolous, you can avoid an order of
10 the court.

11 THE COURT: You know what? I don't try to interrupt
12 you, so try not to interrupt me. All right.

13 MS. BARTILSON: I'm sorry. I apologize, Your Honor.

14 THE COURT: Is June 1st all right?

15 MR. GREENE: For me it's not, Your Honor. I have a
16 conflict and maybe I can change that conflict, so I'll try.

17 THE COURT: June 1st. Is that all right for you?

18 MR. WILSON: Yes, it is, Your Honor.

19 THE COURT: We'll see you back here June 1st.

20 Mr. Armstrong, you are ordered to return on
21 June 1st at 9:30.

22 MR. GREENE: Thank you, Your Honor.

23
24 (Proceedings concluded.)
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28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 86

HON. DIANE WAYNE, JUDGE

CHURCH OF SCIENTOLOGY,

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STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

ss.

I, MARIE FOX, a duly designated transcriber, do hereby declare and certify under penalty of perjury that I have caused to be transcribed the portion of tape 1 which was duly recorded in the Superior Court of the State of California, County of Los Angeles, Department 86, on the 5th day of March, 1993, in the above-mentioned case, and that the foregoing 6 pages comprise a true and correct, accurate transcription of the aforementioned tape.

Dated this 19th day of March, 1993.

Marie Fox COPY

Transcriber